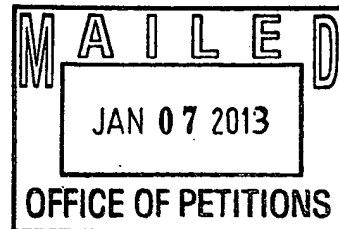




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In re Application of :
Norman et al. : DECISION ON APPLICATION
Application No. 09/711,194 : FOR
Filed: November 13, 2000 : PATENT TERM ADJUSTMENT
Atty Docket No. 1391-CIP-00 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed November 21, 2012. Applicants request that the initial determination of patent term adjustment be corrected from two thousand eighty (2080) days to two thousand four hundred seventy-one (2471) days.

The request for reconsideration of the initial determination of patent term adjustment (PTA) is **GRANTED TO THE EXTENT INDICATED HEREIN.**

On November 6, 2012, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 2080 days. On November 28, 2012, applicants timely¹ submitted an application for patent term adjustment (with required fee). Applicants submit that the Notice of Appeal was filed on July 5, 2005, not July 31, 2006. In effect, applicants maintain that the period of successful appellate review should be calculated using the July 5, 2005 date. Thus, the period of delay for successful appellate review

¹ The Issue Fee payment has not yet been received and is not yet due.

pursuant to 37 CFR 1.703(e) should increase from 2,165 to 2,556 days.

Applicants are incorrect. In fact, the period accorded of 2,65 days is greater than applicants are entitled to. Applicants' attention is directed to the final rule, *Revision of Patent Term Adjustment Provisions Relating to Appellate Review*, 77 FR 49354 (August 16, 2012). As the notice of allowance was issued in this application on November 6, 2012, which is after September 17, 2012, the amendments to 37 CFR 1.703 in this final rule are applicable to this application, and any patent issuing thereon².

Formerly, 37 CFR 1.703(e) defined the period of appellate review in 35 U.S.C. 154(b)(1)(C)(iii) as beginning on the date on which a notice of appeal to the Board was filed under 35 U.S.C. 134 and § 41.31. The final rule revises the rules of practice to indicate that the period of appellate review under the patent term adjustment provisions of the AIPA begins when jurisdiction over the application passes to the Board rather than the date on which a notice of appeal to the Board is filed. Specifically, as amended, 37 CFR 1.703(e), now provides:

The period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which jurisdiction over the application passes to the Patent Trial and Appeal Board under § 41.35(a) of this chapter and ending on the date of a final decision in favor of the applicant by the Patent Trial and Appeal Board or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

Further, 37 CFR 41.35 provides:

(a) Beginning of jurisdiction.

Jurisdiction over the proceeding passes to the Board upon the filing of a reply brief under § 41.41 or the expiration of the time in which to file such a reply brief, whichever is earlier.

² The amendment to 37 CFR 1.704 is applicable with respect to the filing of an appeal brief in any application in which a notice of appeal under 37 CFR 41.31 is filed on or after September 17, 2012. No notice of appeal was filed in this application on or after September 17, 2012. As such the amendment to 37 CFR 1.704 is inapplicable.

(b) End of jurisdiction. The jurisdiction of the Board ends when:

- (1) The Director or the Board enters a remand order (see §§ 41.35(c), 41.35(e), and 41.50(a)(1)),
- (2) The Board enters a final decision (see § 41.2) and judicial review is sought or the time for seeking judicial review has expired,
- (3) An express abandonment which complies with § 1.138 of this title is recognized,
- (4) A request for continued examination is filed which complies with § 1.114 of this title,
- (5) Appellant fails to take any required action under §§ 41.39(b), 41.50(a)(2), 41.50(b), or 41.50(d), and the Board enters an order of dismissal, or
- (6) Appellant reopens prosecution pursuant to § 41.40(b) or in response to a new ground of rejection entered in a decision of the Board (see § 41.50(b)(1)).

In this instance, a reply brief was filed on December 18, 2007 and the Board entered a favorable decision on July 3, 2012. The period of adjustment under § 1.702(e) is 1,660 days.

The determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE THOUSAND FIVE HUNDRED SEVENTY-FIVE (1,575) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the application.

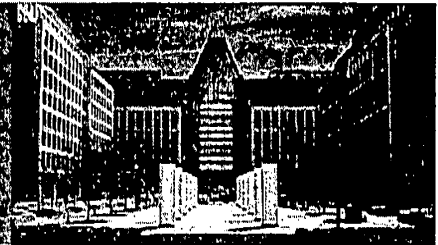
Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

/Nancy Johnson/

Nancy Johnson
Senior Petitions Attorney
Office of Petitions



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number: 09711194

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[Explanation of PTA Calculation](#)

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PTA Calculations for Application: 09711194

Application Filing Date 11/13/2000	Overlapping Days Between (A and B) or (A and C) 0
Issue Date of Patent	Non-Overlapping USPTO Delays: 2330
A Delays 165	PTO Manual Adjustment: 505
B Delays 0	Applicant Delay (APPL): 250
C Delays 2165	Total PTA (days): 1575

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
134	01/04/2013		P028	Adjustment of PTA Calculation by PTO	1660	0	
133	01/04/2013		P028	Adjustment of PTA Calculation by PTO		2165	0
121	11/06/2012		MN/ =.	Mail Notice of Allowance		0	
120	10/20/2012		OAR	Office Action Review		0	
119	10/20/2012		OAR	Office Action Review		0	
118	10/20/2012		IREV	Issue Revision Completed		0	
117	10/20/2012		DVER	Document Verification		0	
116	10/20/2012		N/ =.	Notice of Allowance Data Verification Completed		0	
115	10/18/2012		EX.A	Examiner's Amendment Communication		0	
114	10/18/2012		CNTA	Allowability Notice		0	
110	07/19/2012		INHY	case Inherited		0	
109	07/19/2012		DOCK	Case Docketed to Examiner in GAU		0	
107	07/03/2012		ELC_RVW	Electronic Review		0	
106	07/03/2012		EML_NTF	Email Notification		0	
105	07/03/2012	07/31/2006	MAPDR	Mail BPAI Decision on Appeal - Reversed	2165	62	
104	06/29/2012		APDR	BPAI Decision - Examiner Reversed		0	
103	02/17/2010		INHY	case Inherited		0	
100	11/04/2009		DOCK	Case Docketed to Examiner in GAU		0	
99	06/15/2009		AP_DK_M	Docketing Notice Mailed to Appellant		0	
98	06/15/2009		APAS	Assignment of Appeal Number		0	
96	06/08/2009		APWD	Appeal Awaiting BPAI Docketing		0	
95	03/30/2009		MRBNE	Mail Reply Brief Noted by Examiner		0	
94	03/26/2009		RBNE	Reply Brief Noted by Examiner		0	
87	04/29/2008		DOCK	Case Docketed to Examiner in GAU		0	
93	04/08/2008		MM327	Mail Miscellaneous Communication to Applicant		0	